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**KEWEENAW BAY INDIAN COMMUNITY LAND CLAIM
SETTLEMENT ACT OF 2023**

DECEMBER 12, 2023.—Ordered to be printed

Mr. SCHATZ, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 195]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 195) to provide compensation to the Keweenaw Bay Indian Community for the taking without just compensation of land by the United States inside the exterior boundaries of the L'Anse Indian Reservation that were guaranteed to the Community under a treaty signed in 1854, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 195 would acknowledge the uncompensated taking by the federal government of Keweenaw Bay Indian Community (KBIC) lands, provide compensation for the taking of those lands, and extinguish all KBIC claims to those lands in exchange for the provided compensation.

BACKGROUND

KBIC is a federally recognized Indian Tribe with a reservation primarily comprised of two non-contiguous tracts on either side of the Keweenaw Bay, in Baraga County in the Upper Peninsula, Michigan. The Tribe is the successor in interest to two treaties with the United States guaranteeing rights of use and occupancy

of certain Michigan lands¹ in 1842 and creating a permanent reservation known as the L’Anse Reservation in 1854.² Both treaties remain in full force and effect.

Between 1893 and 1937, under the Swamp Lands Act of 1850,³ the federal government transferred approximately 2,743 acres from within the Tribe’s reservation to the State of Michigan without compensation to the Tribe and in violation of the Tribe’s 1842 treaty.

Separately, under the Canal Lands Act of 1850,⁴ the U.S. Department of the Interior (DOI) transferred between 1,333 and 2,720 acres of land within the Tribe’s reservation to the state of Michigan to defray the state’s cost of constructing the Sault Ste. Marie Canal, again without any compensation to the Tribe and in violation of the Tribe’s 1854 treaty.

NEED FOR LEGISLATION

Non-Indian individuals, entities, and local governments acquired the former Canal and Swamp lands in good faith and have a vested interest in possessing clear title. In a December 2021 letter, the DOI determined that the Tribe’s takings claims have merit.⁵ Without S. 195, title to these lands remains clouded and the Tribe’s claims against the United States for illegal taking of these same lands actionable.

SUMMARY OF THE BILL

S. 195 authorizes \$33,900,000 to be transferred to the Tribe in settlement for the uncompensated taking of their lands and authorizes the use of such funds for any legal purpose except for the purchase of land for gaming purposes. S. 195 also extinguishes all of the Tribe’s claims to previously taken land and clears title to those lands for current land owners.

LEGISLATIVE HISTORY

On January 31, 2023, Senators Peters (D-MI) and Stabenow (D-MI) introduced S. 195, the *Keweenaw Bay Indian Community Land Claim Settlement Act of 2023*. On the same day, the Senate referred the bill to the Committee on Indian Affairs. On May 3, 2023, the Committee held a legislative hearing to receive testimony on S. 195. On July 19, 2023, the Committee held a duly convened business meeting to consider S. 195. The Committee ordered S. 195 reported favorably, without amendment, by voice vote.

On January 31, 2023, Representative Bergman (R-MI) introduced H.R. 650, the *Keweenaw Bay Indian Community Land Claim Settlement Act of 2023*, an identical companion bill to S. 195. The bill was referred to the Committee on Natural Resources on the same day. On February 21, 2023, the bill was further referred to the Natural Resources Subcommittee on Indian and Insular Affairs. To date, the House has taken no further action on H.R. 650.

¹ Treaty with the Chippewa at La Pointe, Oct. 4, 1842, 7 Stat. 591.

² Treaty with the Chippewa at La Pointe, Sept. 30, 1854, 10 Stat. 1109.

³ Sept. 28, 1850, ch. 84, 9 Stat. 519.

⁴ Aug. 26, 1852, ch. 92, 10 Stat. 35.

⁵ Letter from Assistant Secretary Bryan Newland to KBIC President Warren Swartz, Jr. (December 10, 2021) (on file with Committee).

SECTION-BY-SECTION ANALYSIS OF S. 195

Section 1—Short title

This section sets forth the short title as the “Keweenaw Bay Indian Community Land Claim Settlement Act of 2023.”

Section 2—Findings

This section sets forth the findings of Congress and describes the historical context of the Treaties to which the Tribe is a party and the land transfers to the state of Michigan.

Section 3—Purposes

This section establishes that the purposes of the Act are to—

- acknowledge the uncompensated taking of Reservation Swamp Lands and Reservation Canal Lands by the federal government from the Keweenaw Bay Indian Community;
- to provide compensation to the Community for that taking;
- to extinguish Tribal claims to Reservation Swamp Lands and Reservation Canal Lands and confirm the current ownership of those lands;
- to extinguish all potential claims by the Tribe against the United States, the State of Michigan, and current landowners; and
- to authorize the Secretary of the Interior to compensate the Tribe and to take any other actions to carry out the Act.

Section 4—Definitions

This section sets forth the definitions used in the Act.

Section 5—Payments

Section 5(a) directs the Secretary to transfer to the Tribe \$33,900,000, as soon as practicable, after the funds are authorized to be appropriated.

Section 5(b) authorizes the use of appropriated funds for any lawful purpose, including, governmental services, economic development, natural resources protection, and land acquisition and prohibits the use of appropriated funds to acquire land for gaming purposes.

Section 5(c) authorizes \$33,900,000 in appropriations to the Secretary of the Interior to carry out subsection (a) for fiscal year 2024 to remain available under expended.

Section 6—Extinguishment of claims

Section 6(a) extinguishes all the Tribes' claims to lands transferred under the Swamp Lands Act and the Canal Lands Act owned by persons or entities other than KBIC in exchange for the compensation provided by the Act, effective on the date on which KBIC receives such payment.

Section 6(b) clears title of all preexisting Tribal rights to lands of current owners to Reservation Swamp Lands and Reservation Canal Lands, effective on the date on which KBIC receives payment pursuant to Section 5(a).

Section 7—Effect

This section clarifies that the bill does not authorize the Secretary to take land into trust for the benefit of the Tribe for gaming purposes or authorize the Tribe to use the settlement funds to acquire land for gaming purposes.

COST AND BUDGETARY CONSIDERATIONS

S. 195 Keweenaw Bay Indian Community Land Claim Settlement Act of 2023			
As ordered reported by the Senate Committee on Indian Affairs on July 19, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2028	2024-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	34	34	34
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Mandate Effects Contains intergovernmental mandate?	Yes, Under Threshold Contains private-sector mandate?

S. 195 would authorize the appropriation of \$34 million in fiscal year 2024 for the Keweenaw Bay Indian Community as compensation for the loss of the lands under the Swamp Land Act of 1850 and the Canal Land Act of 1852. The funds could be used by the tribe for any lawful purpose, including governmental services, economic development, natural resources protection, and land acquisition for purposes other than gaming. For this estimate, CBO assumes that the Congress will appropriate the specified amount in fiscal year 2024.

S. 195 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The cost of the mandates would not exceed the annual threshold established in that act (\$99 million in 2023, adjusted annually for inflation).

The bill would extinguish claims of the Keweenaw Bay Indian Community against owners of the Reservation Swamp Lands and the Reservation Canal Lands. Eliminating an existing right of action is a mandate because the right to seek redress and recover damages beyond what is provided in the bill would be lost. Based on information from the tribe, CBO expects it is unlikely that the tribe would pursue such claims. Therefore, CBO estimates that the cost, if any, of the mandate would be small.

The bill would prohibit gambling on tribal land obtained by the Keweenaw Bay Indian Community with funds from the settlement awarded under the bill. Because gaming on such land is currently allowed under federal law, the proposed ban would be a mandate. However, because the tribe has no plan to use settlement funds to obtain land for gaming purposes, the cost of the mandate would be small.

The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Julia Aman (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 195 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 195.

CHANGES IN EXISTING LAW

On February 9, 2023, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.

